

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

February 23, 2011

RE: LEVAR ALI HARLEY V. JON D. FISHER, ETAL  
CA No. 10-6825

**NOTICE**

Enclosed herewith please find a copy of the Report and Recommendation filed by United States Magistrate Judge Rueter, on this date in the above captioned matter. You are hereby notified that within fourteen (14) days from the date of service of this Notice of the filing of the Report and Recommendation of the United States Magistrate Judge, any party may file (in duplicate) with the clerk and serve upon all other parties written objections thereto (See Local Civil Rule 72.1 IV (b)). **Failure of a party to file timely objections to the Report & Recommendation shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court Judge.**

In accordance with 28 U.S.C. §636(b)(1)(B), the judge to whom the case is assigned will make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. The judge may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge, receive further evidence or recommit the matter to the magistrate judge with instructions.

Where the magistrate judge has been appointed as special master under F.R.Civ.P 53, the procedure under that rule shall be followed.

MICHAEL E. KUNZ  
Clerk of Court

By:   
LINDA V. JERRY, Deputy Clerk

cc: HARLEY  
CASENTA

Courtroom Deputy to Judge McLaughlin

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LEVAR ALI HARLEY

CIVIL ACTION

v.

COMMONWEALTH OF  
PENNSYLVANIA, et al.

NO. 10-6825

**REPORT AND RECOMMENDATION**

THOMAS J. RUETER  
United States Magistrate Judge

February 22, 2011

Presently before the court is a pro se petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Petitioner is presently incarcerated at the State Correctional Institution at Huntington, Pennsylvania. For the following reasons, this court recommends that petitioner's petition to withdraw his petition for a writ of habeas corpus be **GRANTED** and the habeas petition be dismissed, without prejudice, so that petitioner may pursue his state court remedies.

On November 19, 2010, petitioner filed the instant habeas petition (Doc. No. 1) raising numerous grounds for relief.<sup>1</sup> On February 10, 2011, Respondents filed a response to the petition urging that it be dismissed because, inter alia, the petition was untimely and petitioner failed to exhaust his state court remedies. (Doc. No. 7.) Thereafter, on February 16, 2011, petitioner filed a "Petition to Withdrawal [sic] Habeas Corpus" (Doc. No. 8), stating as follows:

Upon receiving an answer the District Attorney of Chester County (Respondents) [sic]. After extensively reviewing my petition, petitioner has discovered procedural defects and defective claims.

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<sup>1</sup> Petitioner submitted his habeas petition on the proper forms on December 21, 2010 (Doc. No. 3).

Petitioner prays that this court grant allowance to withdrawal [sic] his writ of habeas corpus, so that he may ... 1) exhaust all of his state remedies, 2) correct all procedural defects and defective claims, 3) not be barred from seeking future federal review or remedies in this court, by habeas corpus petition.

(Pet. to With. at 1.)

Accordingly, the court makes the following:

**RECOMMENDATION**

AND NOW, this 22nd day of February, 2011, the court respectfully recommends that petitioner's "Petition to Withdrawal" (Doc. No. 8) be **GRANTED**, and that the petition for a writ of habeas corpus be **DISMISSED** without prejudice to petitioner's right to seek further relief pursuant to 28 U.S.C. § 2254.<sup>2</sup>

Petitioner may file objections to the Report and Recommendation. See Loc. R. Civ. P. 72.1. Failure to file timely objections may constitute a waiver of any appellate rights.

BY THE COURT:

  
\_\_\_\_\_  
THOMAS J. RUETER  
Chief United States Magistrate Judge

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<sup>2</sup> This court makes no finding as to whether the instant petition for a writ of habeas corpus was filed in a timely manner as required by 28 U.S.C. § 2244(d). Any subsequent habeas petition filed by petitioner must comply with the requirements contained in 28 U.S.C. § 2244(d) and all other statutory provisions.

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LEVAR ALI HARLEY

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NO. 10-6825

**ORDER**

AND NOW, this        day of                                  , 2011, upon careful and independent consideration of the pleadings and record herein, and after review of the Report and Recommendation of Thomas J. Rueter, Chief United States Magistrate Judge, it is hereby

**ORDERED**

1.     The Report and Recommendation is **APPROVED** and **ADOPTED**;
2.     Petitioner's "Petition to Withdrawal [sic] Habeas Corpus" (Doc. No. 8) is **GRANTED**; and
3.     The petition for a writ of habeas corpus is **DISMISSED** without prejudice.

BY THE COURT:

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MARY A. MCCLAUGHLIN, J.